

August 30, 2004

To: File
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Subject: Mineral Surveys – Crosswalk of Significant Dates with Title and Surveying Processes – An Aid to Bona Fide Rights as to Location – For the Federal Authority Surveyor

Caveat

One thing is clear when surveying and resurveying mining claims and mineral surveys; it is not always clear what is the proper decision based upon the facts, because the facts of each claim, site, survey, and patent is unique and often codependent. The relevant facts can be a century or more old. Plus; rules, procedures, technology, and values have been changing from the very beginning of mining law. This short essay speaks to the general. The intended audience is the Federal Authority Surveyor including the U.S. Deputy Mineral Surveyor. It speaks to information necessary in every case, but, not to the application of the information in a case. There is an exception to every rule and a nuance to every situation. It is believed that the experienced surveyor equipped with boundary law fundamentals, the congressional purpose of the mining laws, and knowledge of what questions to ask, will do justice.

Date of Bona Fide Rights

There are dates which have significance for the proper location of Federal lands or Federal interests in lands. By location is meant, “on the surface of the earth”, often referred to as “bona fide rights as to location.” See 43 U.S.C. § 772. These dates also affect the proper location on the surface of the earth of the record title right between two parties, of which the United States may or may not be a party, often referred to as “junior – senior rights.”

The dates the Federal Authority Surveyor should know with certainty when conducting a: 1) mineral survey, 2) resurvey of mineral survey, or 3) mineral segregation survey, are listed below in chronological order:

Location Date

This is the date the last corner of a location (claim) is marked. To maintain this location date the claimant must subsequently comply with appropriate federal and state laws and regulations. The claimant must within the appropriate time frame record (file) the claim. The location date is recorded on the location certificate. The location certificate will also contain the location (claim) description and a map (diagram) showing the position of the claim on the ground based upon the location survey and monuments. The location date can determine; a) the date of the possessory right as to title; b) the spatial relationship of the boundaries between the location (claim) and the lands held by the United States; and c) the junior-senior title rights between two parties.

Mineral Survey Filing Date

This is the date the mineral survey plat is officially filed in the BLM Land Office. This is the date bona fide rights as to location on the surface of the earth vests to the applicant, subject to claim and site validation and mineral examination validation. This date is subsequent to the date the plat is accepted by the BLM State Office Chief Cadastral Surveyor.

NOTE: The next paragraph summarizes the Departmental procedure applicable from 1866 to 1958 and again subsequent to Solicitor Opinion M-36990, *Entitlement to a Mineral Patent Under the Mining Law of 1872*, (November 12, 1997).

Final Certificate Date

This is also called the mineral entry date. This is the date on the final certificate. On this date complete equitable title vests to the applicant. The title right accrues back to the location date. The bona fide right as to location on the surface of the earth accrues back to the filing date of the mineral survey, amended mineral survey, or supplemental plat, which ever is relevant.

NOTE: The next two paragraphs summarized the Departmental procedure applicable from 1958 to Solicitor Opinion M-36990, *Entitlement to a Mineral Patent Under the Mining Law of 1872*, (November 12, 1997).

First Half Final Certificate Date

This is also called the mineral entry date. This is the date on the first half of the final certificate. On this date complete equitable title vests to the applicant, if the applicant has furnished enough information to enable the Department to verify all is regular, and upon demonstration and verification of a valid discovery of a valuable mineral deposit, and subject to the reservations, exceptions, and restrictions noted, i.e., for a claim, the Department will verify a valuable mineral discovery; or, in the case of a millsite the Department will verify that the land is non-mineral and that the applicant is using, occupying and will need the acreage claimed for mining or milling purposes. The title right accrues back to the location date. The bona fide right as to location on the surface of the earth accrues back to the mineral survey filing date.

Second Half Final Certificate Date

This is the date on the second half of the final certificate. This date is when complete equitable title vest to the applicant. The title right accrues back to the location date. The bona fide right as to location on the surface of the earth accrues back to the filing date of the mineral survey, amended mineral survey, or supplemental plat, whichever is relevant.

Patent Date

This is the date of the signature on the patent, the date the patent is issued. This is the date when full fee simple title vest to the applicant. Legal title to the land is transferred on this date. The title right accrues back to the location date. The bona fide right as to location on the surface of the earth accrues back to the filing date of the mineral survey, amended mineral survey, or supplemental plat, which ever is relevant.

Other Considerations

Many of these dates can be affected by a contest, quiet title action, adverse proceeding, mineral survey, amended mineral survey, supplemental plat, conformation of a discovery of a valuable mineral deposit, protest, appeal, fraud or mistake. Many of these dates can also be affected by a new location, relocation, new mineral survey, and more. This is not an exclusive list.

Bona Fide Rights as to Location

For each corner and each boundary of an unpatented mineral claim or site; and for a patented mineral claim or site; one or a combination of the above dates may affect the proper location of Federal interest lands. With the dates known, the surveyor will then search for the necessary records of surveys, official and local.

When evaluating each survey impacting the area to be surveyed, there are some facts which the surveyor should be certain about, these are:

1. Is the survey to be conducted a, a) mineral survey, b) resurvey of a mineral survey, or, c) mineral segregation survey?
2. When retracing a mineral survey, is it a, a) patented mineral survey, or, b) unpatented mineral survey?
3. When retracing a location (claim) survey, are the corners and lines subject to movement in the future? Are the boundaries of the possessory rights as to location subject to float?
4. When retracing contiguous mineral surveys, were they surveyed, a) simultaneously, or b) sequentially? Simultaneously meaning returned by one mineral survey. Sequentially means returned by separate mineral surveys.
5. When retracing contiguous location (claim) surveys, were they surveyed, a) simultaneously, or sequentially?
- 6) Is each “gap” and “overlap”, a) of record, or b) not of record?

Evidence of Legal Descriptions, and Local Surveys, Maps and Diagrams

The mineral survey is the basis of the patent description of the mining claim, but is not the first survey of the claim. There probably have been multiple activities which could provide physical or description evidence of corner and boundary location of the claim, its contiguous claims, and conflicting claims.

The legal description within the patent is based upon the mineral survey. The patent legal description may not be identical with the claim description, and the claim description may have changed more than once before becoming finalized in the patent. Some of these intervening surveys, maps, diagrams and descriptions, and where a record of each may be found are listed in chronological order. This is not an exclusive list.

Location

Location Survey (Claim Survey), Location Diagram (Map), and Location (Claim) Description – The mining claim description is filed with the location certificate. The location survey marks the claim and site corners and boundaries. The location diagram (map) is recorded with the location certificate. The location certificate is recorded at the local recording office and in the BLM mining recordation case or patent file.

Contest

A mining claim could have been contested. A contest is either, a) a private contest or b) a government contest. The contest is held in front of the DOI/GLO/BLM. The result of a contest is an administrative decision. The decision may contain “refreshed” legal description(s). If the locus of a claim or claims were at issue, a “contest survey” may have been submitted as evidence. The administrative decision and supporting documents will be in the BLM contest case or patent file.

Quiet Title Action

A mining claim could have been the subject of a suit to quiet title before a local court of competent jurisdiction. The quiet title action could have resulted in a court decree, court order, settlement with stipulations, etc. The outcome may contain “refreshed” legal description(s). If the locus of a claim or claims were at issue a “quiet title action survey” may have been submitted as evidence. The judgment roll and supporting documents should be filed at the local courthouse and in the BLM mining claim recordation case or patent file.

Adverse Proceedings

A mining claim could have been subject to an adverse claim. The adverse claim is filed with the GLO/BLM and followed by a suit filed in a local court of competent jurisdiction. The adverse suit could have resulted in a court decree, court order, settlement with stipulations, etc. The outcome may contain “refreshed” legal description(s). There is almost certainly an adverse survey(s). The judgment roll and supporting documents should be filed at the local courthouse and in the BLM patent file.

Mineral Examination and Mineral Report

The DOI mineral examiner will visit the claim and site and write a mineral report. The focus of the report is mineral classification. If any 10 acre legal subdivision or tract of a placer is determined non-mineral in character, it could be removed from the mining claim. If any 2½ acre legal subdivision or tract of a millsite is determined to be mineral in character, or not used, occupied, or needed for mining or milling, it could be removed from the site. The mineral examiner report is in the BLM case or patent file.

Protest or Appeal

A claim may have been part of a protest to the DOI/GLO/BLM. The document material use to adjudicate the protest will be in the BLM case or patent file. A decision on the protest could have been appealed to the DOI/OHA/IBLA. There will be records of briefs,

statements of reasons, replies, orders, decisions, etc. The case file will be retained by the GLO or BLM after proceedings have concluded.

Title Rights

By the mining laws of the United States three distinct classes of titles are created, viz.:

- 1) Title by possession.
- 2) Complete equitable title.
- 3) Title in fee simple.

The third vests in the grantee of the government an indefeasible title, while the first vests a title in the nature of an easement only. The third, being an absolute grant by purchase and patent without condition, is not defeasible, while the first being a mere right of possession and enjoyment of profits without purchase, and upon condition, may be defeated at any time, by the failure of the party in possession to comply with the condition, viz.: to perform the labor or make the annual improvement required by statute.

The complete equitable title vests immediately upon purchase, evidenced by the date of the patent certificate. From 1958 to 1997 this is the date on the first half of the final certificate, subject to mineral examination validation. From 1866 to 1958 and again from 1997 to date, this is the date on the final certificate. The right to a patent once vested is equivalent to a patent issued.

A title by right of possession is the lowest grade of title known to the mining laws (and to the public land laws, i.e., preemption, homestead entry); the next is the equitable title which accrues upon purchase and mineral entry, while the final grade is the fee simple, which is acquired by patent, evidencing the legal title and merging therein both the possessory and equitable titles.

The possessory right provided for may continue for an indefinite term of years, and can only be terminated by a failure of the claimant to comply with the terms of the statute, and an assertion of claim to the land by another; but there is nothing in the law which requires a party in possession to purchase the land from the government, and if he complies with the law relating to possessory rights, his title, for all practical purposes, is as good as though it were secured by patent.

The above discussion is speaking to title rights to the surface estate and the subsurface estate including the extralateral estate. But it can be inferred without much difficulty that the same reasoning can be applied to the bona fide rights, whether in the class of possessory, equitable or fee, as to location on the surface of the earth and beneath the surface of the earth. It has been said, as to location, once the statutory requirements have been met, the claimant “shall have the exclusive right of possession and enjoyment of all the surface included *within the lines* of their locations although the United States retains title to the land.” *California Coastal Comm’n v. Granite Rock Co.*, 480 U.S. 572, 575 (1987) emphasis added. The surveyor must be able to recognize when bona fide rights as

to location of the surface estate is not identical with the bona fide rights as to location of the subsurface estate, including the extralateral estate.

Summary

Therefore, in very general terms, by today's rules and regulations, here are the condition of the bona fide rights as to location on and beneath the surface of the earth per each class of title:

Possessory Right

As to title, vests on the location date. The bona fide rights as to location on the surface of the earth is floating on the location date. Some cases where the claim or site boundaries can move are; if the claim exceeds size by statute; or, if a portion of a placer claim is determined to be non-mineral; or, if a portion of a millsite is determined mineral or not necessary.

Equitable Title

As to title, from 1958 to 1997 vests on the date the first half of the final certificate is signed, and accrues back to the location date. This right is subject to mineral examination validation. From 1866 to 1958, and again from 1997 to date, vests on the date the final certificate is signed, and accrues back to the location date. The bona fide rights as to location on the surface of the earth was fixed on the date the mineral survey was filed, and on the date the amended mineral survey or supplemental plat, if any, is filed; subject to adverse proceedings and mineral examination validation. One survey plat can cover a portion of the description and another plat with a different filing date can cover the remainder of the description.

Fee Simple Title

As to title, from 1958 to 1997 vests on the date the second half of the final certificate is signed, and accrues back to the location date. From 1866 to 1958, and again from 1997 to date, vests on the date the final certificate is signed, and accrues back to the location date. This is subject to protest and appeal until the date of the patent. The finality of the patent issuance is excepted in cases of fraud or mistake, which are subject to statute of limitations. The bona fide rights as to location on the surface of the earth was fixed on the date the mineral survey was filed, and on the date the amended mineral survey or supplemental plat, if any, is filed. One survey plat can cover a portion of a patent description and another plat with a different filing date can cover the remainder of the patent description.